ONTARIO SCHOOL TAX LEGISLATION

SPEECH BY

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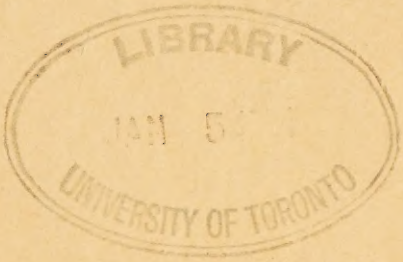

PRINCIPLE OF BASIC LAW
WAS EQUALITY OF SUPPORT

THIS PAMPHLET contains interesting reading. The subject is the so-called school question, or more specifically, the problem of the division of the assessment of corporations between public and separate schools.

The form is that of debate. The scene is the Assembly Chamber of the Ontario Legislature. The galleries are crowded and the Attorney-General has the floor. The clash of thought is spirited and enlivening.

The speaker is a constitutional lawyer, a student of history and a master of debate. The result is an outstanding contribution, in most readable form, to the legal and historical literature on this subject.

The speech assists in many ways to a correct understanding of a great public question.

THE following speech, delivered by HON. ARTHUR W. ROEBUCK, K.C., Attorney-General, in the debate on the second reading of Bill No. 138 at the evening session of the Ontario Legislature on Monday, the 6th of April, 1936, includes a splendid historical review and makes a valuable contribution to the proper understanding of a great public question:

MR. ROEBUCK: Mr. Speaker, I am sure you have listened with great interest to the Speeches on this subject, dug up from the long distant past and read by the Honourable Gentleman from Bracondale these last two hours. I was sure at first as I listened to him that he was reading from some excerpts, as within the rules of the House, but it struck me that this could not possibly be the case, because I have read a good many books upon the subject and in none of them have I found such a collection of errors and mistakes as appears in the reading of my honourable friend, and so I have concluded that they must be his own composition. (Laughter.) But then as he proceeded, I found I was wrong; that what he had actually done was to collect all the mistakes out of all the books and speeches that he had ever read, and had presented them in one long succession for the edification of this Assembly.

My friend has complained about the bringing on of this question, as he says, in the dying hours of the session, when there would be no time for discussion. Well, may I say that if he requires more than two hours, I for one, am ready to listen. But, Mr. Speaker, I find that the complaint is not well founded, because I have in my hand a letter which, through his kindness, was sent across the floor for my edification. It is a letter which he read at great length and is written by a former Grand Master of the Orange Order of the Province of Ontario. Like most of those from whose writings he read, he is now passed to his reward. I notice it is dated 12th February, 1935, that is one year ago, and the opening sentence of the letter says:

"I am glad to know that you have been entrusted with the duty of leading the Opposition in this particular."

So that, Mr. Speaker, apparently from this letter, the speech which my friend has just now delivered was in preparation one year ago, for he was at that time—

"entrusted with the duty of leading the Opposition"

in opposing the measure which he anticipated would be brought down by this Government. If more notice and more preparation than that be required, my friend should have got up earlier in the morning and started several years ago.

Grants to Dissentient Schools.

I am sure I cannot see how his verbal onslaughts on the school system of the Province of Quebec could be of any interest in this debate, because we are at the present time legislating for the Province of Ontario and not for the Province of Quebec, and there is no suggestion that we propose to introduce in this Province the three panel division of taxes, such as is in vogue in the Province of Quebec. My friend has made the charge that in the Province of Quebec there are no grants in aid of the dissentient schools. Well, I am sure I don't know where he got that information. I have in my mind, as it happens, a letter from the Director of Protestant Education in the Province of Quebec. One paragraph states:

"I send you a pamphlet which extends financial support by taxation and by grants to small rural schools with limited valuation. These receive grants from the Poor Municipality Fund. I enclose report of the grants paid by the Protestant Poor Municipality Fund last year. The grants to the Protestant School, however, are larger than those paid to Catholic members, as the Protestant Committee adds to the share of legislative grant the sum of $7,000 from the Normal School Fund and $3,700 from other fees."

So that not only do they make grants in the Province of Quebec, but they make larger grants to the Protestant schools than they do to the Catholic schools. (Applause.)

I have here a statement of the amounts paid in the fiscal

year of 1933-34 in the Province of Quebec, entitled "Protestant Poor Municipality grants." They are set out in columns. Set out individually. I shall be glad to let my friend see them if at all interested, or if he will be amused to read how inaccurate have been his statements.

MR. PRICE: Have you got the total amounts given for the types of schools?

Capital Out of Religious Animosities.

MR. ROEBUCK: We are not gauging our legislation by that of the Province of Quebec, nor are we in any way limited by what they do down there, but this does stand out throughout the honourable gentleman's remarks: He says that 75% of the Corporation taxes which fall into the neutral panel go to Roman Catholics' Schools, and that only 25% of that class of taxation is devoted to the Protestant Schools. I am not in a position at the moment to check the accuracy of these figures, but I do observe with very great interest that the Province against which he launches his attack has continued to give 25% of the taxes of corporations to the dissentient schools which correspond in some respects to the Separate Schools of the Province of Ontario, while here in the Province of Ontario that portion of corporation taxes which goes to Separate Schools is a very small percentage indeed, an almost negligible portion of the whole.

My friend said that he has no particular objection to the quotation used by the Minister of Education: "Do unto others as you would have them do unto you." I am glad to hear that a precept so old and revered is not objected to by a member of the Opposition, but what I would like to see is not an absence of objection to the ideal, but rather a greater readiness to follow it, not only in theory but in practice. That is what is advocated by the Minister of Education. The member for Bracondale has taken advantage of the simple situation before us to make a little political capital out of religious animosities and doctrines in the country in which he lives. (Cries of "Order.")

MR. NESBITT: Mr. Speaker, I object to that. I have always been consistent on this question. I insist upon the honourable member taking that back. My record on the ques-

tion is known to the House for the last twelve years, and every gentleman in this House, irrespective of religion or creed, knows my views on this matter.

MR. ROEBUCK: I don't yield.

MR. NESBITT: I don't think the honourable gentleman should be allowed to make that speech.

MR. ROEBUCK: We will have a chance to judge the honourable gentleman from Bracondale on his record between now and next election.

MR. ELLIS: May I refer you, Mr. Speaker, to Rule 15, and I submit under that Rule, the Hon. the Attorney-General has used most offensive language regarding the member for Bracondale, and should be required to withdraw those words.

MR. SPEAKER: The honourable member for Bracondale replied to the Hon. the Attorney-General, and he seemed quite satisfied.

Let Future Conduct Decide.

MR. ROEBUCK: I was in process of saying I was ready to forget the remarks made by the honourable gentleman, since he wishes me to do so.

MR. HENRY: I am rising to a point of order. I would ask the Attorney-General to sit down.

MR. ROEBUCK: The Speaker is on the floor. You sit down.

MR. SPEAKER: The exact words of your remark were that the honourable member for Bracondale tried to make political capital out of a religious issue.

MR. HENRY and MR. NESBITT: I ask that those words be withdrawn.

MR. ROEBUCK: Mr. Speaker, that is my opinion. I was ready to hold out the olive branch.

MR. NESBITT: Is the honourable member withdrawing?

MR. ROEBUCK: No, I am not withdrawing not for an instant. I was trying to be kind to you though, but the truth must be stated. I am prepared to forget the statements that the honourable gentleman has made during this debate and to judge him by the statements that he will make between now and the next election.

MR. NESBITT: That is just about as fair as if I were to

offer to forget the words you spoke as a Socialist in Northern Ontario. You are not following Karl Marx to-night.

MR. ROEBUCK: Now I am not going to ask the honourable gentleman to withdraw that, although he is calling names. "Sticks and stone will break your bones, but names will never hurt you." I don't propose to be diverted into an economic argument in the midst of this discussion. Some day I will discuss the question of Socialism with the member, but not now. I never have been a Socialist, I am not now, and am never likely to be one, but rather my philosophy is diametrically opposed to the philosophy of Karl Marx, but that has nothing to do with this discussion, and I propose to devote, as far as possible, all my attention to the matters in question. If I may be permitted to say so, notwithstanding his proclivities, the honourable gentleman really is a nice, genial, likeable, loveable chap, and I would be sorry indeed to see him disappear from this House, but there are more serious things to discuss than excerpts from the long dead past recently read by the honourable gentleman from Bracondale. Much more important is the statement, it seems to me, of policy upon this question which was enunciated this afternoon by the Leader of the Opposition. In so doing, he has enunciated the policy of the Conservative Party upon this question. One may very easily go astray in the discussion of a great public question unless one holds before his eyes the very problem under consideration, and I would like the House to pay attention to what it is we are talking about, and not be diverted by speeches made twenty years ago by statesmen who have long since passed to their reward.

Some Children Are in Need.

There is a section of our school population in the Province of Ontario that has not been properly and adequately provided for. Never mind the reason. To me a child is a child, irrespective of the religion of its parents, and it does seem that in the Province of Ontario at the present moment there is a certain section of these little people of ours, who are not being provided for adequately or equally treated in the matter of school taxes. That is a matter to me of outstanding importance, and one that transcends all legal arguments or legal refinements.

The fact is that there are some boys and girls in the Province of Ontario who are not being given quite as good a chance as they might have if a few more dollars were spent upon their education, and upon the physical surroundings in which that education is received.

Now it seems to me that these children of ours, and the grants are for child benefit, not for adult benefit. Get that! It seems that these children have made application to the Parliament of Ontario and to this Government for a readjustment of that financial situation in order to give them an equal chance with other school children of their own age, and they have come not only to the Prime Minister who has turned a sympathetic ear to their complaint, but they have also gone to the present Leader of the Opposition, and if I got him aright, this was the answer he made. He says, The statute of 1863 was the last will and testament upon this subject, which cannot be altered by the executors and administrators. "The Courts alone," was his statement, "the Courts alone have power to alter it, and that is where I stand."

These children have come to ask for some relief, few dollars, paltry dollars, that will place them on a basis of equality with other groups in our common schools. What did they get from the Leader of the Opposition? They asked for bread. He gives them a stone. (Loud applause.)

His answer is: "It was settled in the Statutes of 1863. Go see your lawyer."

Hard, Cold and Uncompromising.

That is the answer. Hard, cold and uncompromising. That is the attitude of the Leader of the Opposition, the recent Prime Minister of this Province. He says we will not give you anything that you can't force by a lawsuit and drag out of us by force of law. That is the answer.

When they, these children, come asking for better conditions in the schools, his answer is: "It is not so nominated in the bond." That was the attitude adopted by a certain notorious gentleman in the "Merchant of Venice." "It is not so nominated in the bond." But there were considerations upon that occasion which were more important than the actual words as he read them in the bond. They were human considerations.

I remember at one time listening to Sir Wilfred Laurier talking upon a great national question alive at that time. His remark was that "I would not open the door to power with a bloody key." That statement is applicable to Members of the Opposition, who are in their places to-day, and have taken their position. The member for Bracondale looks forward with joy to using, not a "bloody key," but rather a key rusty with the ancient animosities of the past to turn the lock and open the door to power.

Yet, he is going to be disappointed. There are those in the Province of Ontario, yes, and they are high up in both orders; in the order that supports most strongly the Protestant cause, and in the order that supports most strongly the Catholic cause—there are men high up in both these orders who are above partisanship in a small matter of this kind. The matter of the apportioning of a little more money required in one of our groups of schools is not sufficient, Mr. Speaker, to raise again religious animosities and religious issues in this Province. Our common sense does not now fear minorities. Above all, the kindness of our people will, I am satisfied, be superior to the passions and prejudices which my friends across the way would stand upon.

The Need Was Recognized.

What I say is true. That there is a section of the schools of Ontario which needs some more support may be proven out of the very words of the Leader of the Opposition spoken in the House this afternoon. He told how grants were given by the Province to the schools in the past up to the time or thereabouts of the late Mr. Whitney. They were on a basis of equality. Following that time, the grants were in accordance with the qualifications of the teachers, on the basis of boosting teachers' salaries. That continued, according to the honourable gentleman, up until about 1930, but from 1930 on, under his Government, the grants had been given in accordance with necessity. They were given to the poorest schools, to quote his own words. And he gives the percentages. He said that in 1930 the grants of both Separate and Public schools combined had been increased by about 50%.

A MEMBER: 50% of the schools.

MR. ROEBUCK: I thank you for the correction. In 50% of both Separate and Public Schools, the grant had been increased, 20% were not materially altered, and 30% had been lowered. Out of the lowering of the 30% had come the increase of the 50%, and then he went on to say that in 1930, under the old grants, there was paid to the Public Schools $3,056,136.84. In 1931, after the system had been changed so as to give greater recognition to poorer schools, the Public School grant was $3,162,714.27, that is to say, an increase in the Public Schools of $106,000. In the corresponding years, in 1930, the grant to Separate Schools was $298,497.44, and in 1931, the grants to the Separate Schools had increased to $441,433.65, an increase of $142,936.21.

Now I am interested in this increase for this reason: The grants in that year, 1931, were on the basis of the poverty of the recipient, or in part at least, and I note that the increase in the grants to the Public Schools was 1/3 to 1%, while the increase in the grants to the Separate Schools, grants made by his Government, and not by ours, was 50%. (Applause.)

Increased Grants to Poor Schools.

There was a 50% increase to Separate Schools, because of the poverty of these schools, and 1/3% increase in the grant to Public Schools, because they were better supplied with funds, and didn't require assistance. Out of his own mouth I prove my case that there are requirements for greater assistance to the Separate Schools of this Province, and I submit to the people of this Province that the method of correcting that simple evil is itself simple, moderate, understandable and fair. My Honourable Friend said that if it had not been for this grant, some Separate Schools would have closed.

He says that prior to 1927, when the Tiny Township case was argued, the Department went further than the law required and gave the Separate Schools help in addition to that which they were entitled to.

MR. HENRY: No, I didn't say that.

MR. ROEBUCK: You mentioned a school which would have closed if it had not been for the grant of funds to the Separate Schools, and my friend now tells me that the Separate

Schools of this Province are as well supported financially as Public Schools.

MR. HENRY: I didn't tell you that. Why be so unfair as to misquote me in reference to greater grants paid by the Department to Separate Schools prior to the decision in the Tiny School case? I was using as an illustration the attitude of the Department in relation to aid to Separate Schools. The interpretation placed on the situation by the Department was that there should be paid to the Separate Schools, and that was what was referred to this afternoon, that there was paid out of unclaimed grants on a special interpretation of the situation. Indeed, the claim put in by the Separate School was found greater than the Privy Council's decision had warranted, and then in reply to the other suggestion of my learned friend, I was giving an illustration of my attitude personally. The attitude of the Department while I was Minister of Education was that during the depression, where I found any schools, irrespective of whether Public or Separate, in difficulty and had to close its doors, the Department gave special grants, not part of the general grant at all, but special grants to keep it on its feet and enable it to carry on.

Decreased Public, Increased Separate.

MR. ROEBUCK: Now I have here, Mr. Speaker, a statement of the grants given these two different types of schools from 1925-26 to 1934-35, and I would call the attention of the House to the significance of their increase and decrease. To begin, let me tell you that the Public Schools' grant totaled in 1925, $2,779,377.69, and in 1934-35, it was $2,035,362.44. That is to say, it was less in 1934-35 than in 1925-26. But what about Separate Schools during that period? Why, I find that the grant to Separate Schools for 1925 was $234,000.84, and in 1934-35, ten years after, it was $455,421.49. That is to say, it had increased because of need, and for no other reason, by 100%. Or take the special grants. To Public Schools, $64,056.41 in 1925-26; $58,933.54 in 1934-35. That is to say, the Public School grant to assisted schools actually decreased in these ten years. What happened in the Separate Schools? The figures tell the tale. The grant in the Separate Schools for 1925-26 for

their assisted schools was $22,225. In 1934-35, it had grown to $50,419.69. Increased, just as had the regular grants, by 100% or more than double.

Now the argument from that is unanswerable and it is this. That the honourable gentleman who now offers the schools a stone when they ask for bread, recognized when he was in the seat of responsibility and not merely looking for votes but rather bent on carrying on the business of the Province, that the Separate Schools were not as well supported as they might be, and let us remember only that Separate School children should be properly educated in our Province, educated equally with the others, to stand their place in the race of life.

My friend says that the terms of the old settlement of 1863 are final. "It is not so nominated in the bond. There must be some finality to this thing." Why, Mr. Speaker, there can be no finality to anything, so long as the great world rolls around, year after year, days succeeding days. There can be no finality. It is true that we must respect the compacts of the past. It is true that tradition plays a very large part in our national life. It is equally true that one of the biggest factors to consider in the present situation is the history of this question, but at the same time we must admit that there can be no finality in anything. No Act can be so drawn by one generation that no "i" can be dotted nor "t" crossed by succeeding generations, and the proof of that fact is this, that in 1886 the Parliament of Ontario altered the Act of 1863 in a much more drastic way than perhaps the Parliament of 1936. In 1886, the principle of dividing corporation taxes between Public and Separate Schools was introduced into our Separate School law, and that law has stood.

The Act Is Constitutional.

My friends across the way have been talking about constitutional rights and all that sort of thing. They have intimated, though not very firmly stated, that this law of ours is in some way unconstitutional; wouldn't stand an attack in the courts. Well if this law is unconstitutional, then so was the Act of 1886, but that Act has stood the test of time; has never been even questioned by anybody, and would have stood the

test had it been attacked in the courts. Remember this Act is not new. During all the cases between Separate and Public Schools, it has stood the test since 1886, and this present Bill simply makes some minor readjustments in the principle, so that the object of the framers of the Act of 1886 may be carried out a little more fully to meet the present emergency.

My friend says that his answer to this plea is to refer the matter to the court. Well, why didn't the honourable gentleman act upon that proposal when he had a chance? As a matter of fact, he did talk in those days of submitting the measure to the courts. He has chided the present Minister of Education because during the election of 1934 he made his position perfectly clear in writing to both the Separate School supporters and the Public School supporters of his own riding. I could not see much fault in a plain and honest statement to ones electors, but I do see something to complain of in the proposal made by the honourable gentleman who now leads the Opposition. Upon that occasion, he told the Separate School supporters that if he was returned to power, he would submit this measure to the court.

MR. HENRY: Oh, now, I didn't make such a statement.

MR. ROEBUCK: You told this Legislature.

MR. HENRY: I read my statement this afternoon; it was made two years ago. It wasn't a matter at the election.

MR. ROEBUCK: My friend made the statement just prior to election; to the taking of the vote.

MR. HENRY: In March. The vote wasn't taken until June.

"Come On" To The Catholics.

MR. ROEBUCK: Well, if the honourable gentleman seriously intended to submit a measure to the courts, why, may I ask, Mr. Speaker, was it not submitted to the courts between March and June? Why did he engage Mr. Tilley prior to the election, and will he now tell us what he said to Mr. Tilley, and why, if he didn't intend to carry out this promise, as stated in the Legislature, and implied in the engaging of counsel for the work, if he didn't intend to do that, why, may I ask now, has the file disappeared? I have had the files searched to try and find out what it was Mr. Tilley was to submit to the courts,

and there is not one scratch of the pen in existence to-day to show that the questions were ever framed.

There are some who say they never were framed, and that all my friend from East York was doing was to give a little "come on" to the Catholics.

My good friend from East York has prided himself as a man of honour. I am not going to take issue with him on that question. I will say he didn't act with any very great courage during the years he was in office. The question was submitted to him and he didn't say on that occasion as he says on this, that not one single five-cent piece, not one jot or one penny would he give to relieve the needs of the Separate Schools, except what they might force at law in the courts. Why didn't he say that before the election, and why say it now?

My friend deplores in his speech the religious controversy which he says this Bill will set rife perhaps for generations. There is nothing in this Bill that speaks of religion. There is nothing that touches the Separate Schools or the Public Schools. This Bill will neither create nor abolish Separate Schools in our Province. It doesn't touch that question at all. It is merely a financial re-arrangement whereby we can meet the needs of one group of our schools, and I say to him that his speech in the House this afternoon has done more to set the fires of religious discord burning in this Province than anything we on this side of the House will do or ever have done. If trouble of the kind which he suggests arises, and I don't believe it will arise, it will be as a result of speeches made by him and his followers in attempting to whip up religious discord in this Province.

Act Is Open To Revision.

Why, he says, this Act once passed, can never be repealed. He likens it to the laws of the Medes and Persians. Why do that? The honourable gentleman is a parliamentarian of some years' standing, and must know that any Act which this Legislature places on the Statute Book, it has an equal right to repeal, and yet by some specious legal argument which I can hardly follow, he wishes to intimate to the people of this Province that some dire die has been cast never to be recalled.

He would work up religious antagonism on which he and his party will play. He knows perfectly well that if this Act should in any way prove unjust or oppressive, or should not work out in some detail, such, for instance, as the Member for Bracondale suggested in Northern Ontario, it may be amended. It can be changed. It can be repealed by the House at the next sitting of the Legislature. This Government will look with anxious eye to see that there are no injustices in the working out of this measure. My Prime Minister has the courage to introduce other measures to remedy its defects as experience shows to be necessary.

My friend has made a great point. He made it two or three times, that we were departing, he said, from the principles of the law of 1863. That the principle of that Act was of voluntary choice on the part of the Separate School or the Public School supporters, but the Bill, he says—

MR. HENRY: There was no choice on the part of the Public School supporters.

The Principle Is Unchanged.

MR. ROEBUCK: Well, there was a choice in 1863 awarded to the Separate School supporter, at all events. He didn't need to be a Separate School supporter, although a Roman Catholic; but to be a Separate School supporter, he had to be a Catholic and he had to be a Separate School supporter as well in order to divert his taxes in that direction. He says, in this instance, we are abolishing the principle of free choice established in the Act of 1863. Well, I would like to direct him to one of the sections of that Act:

> "XX. Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments, and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number

of pupils attending school in the same City, Town, Village or Township."

Do you observe that in the law of 1863 it was there provided that any grants made by the Province or by the municipality, investments and allotments for Common Schools were to be divided? The choice was not any more of a choice than this Bill sets up. These were all to be divided on the basis of school population. That was the principle set up there for the division of taxes, and grants and allotments and investments by the Province or by the municipalities, other than the allotment of taxes from property privately owned. My friend mentioned, in this connection, taxes to be levied upon the Canadian Pacific Railway and the Bell Telephone Co., and says, in this instance, there is no choice. There is at least as much choice as there was in Section 20 of the School Act of 1863.

But, as a matter of fact, Mr. Speaker, there is a choice in both instances, and the choice rests with the supporter of the Separate School; to be a Separate School supporter or not to be a Separate School supporter, and, as he chooses, so does the school portion of the school assessment vary. The division of the taxes of the C.P.R. and the Bell Telephone will actually depend upon the choice of the Roman Catholics as to how many of them support the Separate School, and upon the amount of property which is assessed for the purpose of their choice. There is no departure from the original fundamental principle of school law laid down by our forefathers in 1863, and confirmed by the British North America Act of 1867.

Schools Are Public Property.

The Member for Bracondale said that every dollar invested by the public in Separate Schools was gone; it was no longer an asset of the Province, while every dollar invested in Public Schools remain an asset to the Province. My friend misconceives the whole situation. I hold in my hand the Separate School Act, in which it is provided:

"44. It shall be the duty of every board and it shall have power to

(k) take possession and have the custody and safe keeping of all school property acquired or given

for school purposes; and acquire and hold as a corporation, by any title whatsoever, land, movable property, money or income given to or acquired by the board at any time for school purposes and hold or apply the same according to the terms on which it was acquired or received."

There is absolutely no difference between the one and the other.

Now let me turn to the background that confronts us in the consideration of this question. There are a number of points of background that we must clearly see and continue to realize if we would give to the problem the consideration that is its due. You know there are those people who, seated by their fireside, are totally incapable of realizing that it is cold without. There are those people, many of them, who look upon Canada as just a little extension or a numerous series of extensions, of their neighbourhood, and they look upon the people of Canada in the broadest sense as just a duplication of the type which they happen to be. Now may I say that idea of Canada is entirely erroneous. There is no uniformity in the people of this country. Canada is not uniform, either in topography or personality. The mountains do not differ from the plains more than one type of our population varies from other types of our population. More pronouncedly perhaps than any other country in the world, Canada is composed of groups of people, red, black, yellow and white; every colour and every race; every nationality has gathered upon our shores.

Not Cast in Common Mold.

Canada is a composite country. It is populated by the English, Scotch and Irish, with their genius for law, constitutionl Government, statesmanship and successful administration. We have the French, with their courtesy. May I say to the Member for Ottawa, with their courtesy, their courage and their resource. We have the Italian people of this Province, with their traditions, their history, their music and their art. They are a very distinctive type. And then we have all those nationalities of the Slavic tongue, with their traditions, their vigor, and industry. We have as well the people of Jewish persuasion, with their wonderful economic and religious

philosophy. Canada is not the country where people can be crushed into one common mold. We are a collection of groups that somehow have learned to live in peace and harmony with their neighbours and to make the concessions required for a contented and united people.

Now, in these circumstances, Mr. Speaker, is it any wonder that as a result of these varying groups of ours, this lack of uniformtiy in our population, is it any wonder that at some time it may be necessary to make some minor adjustments with regard, say, to religious questions, or to school law? I think it would be most extraordinary if that were not the case.

May I point this out to the House, that non-denominational schools, such as our Public Schools, are something of quite recent origin. I think everybody will agree with me in that. In mediaeval times, the only schools known were those under the control of the churches, and up until very modern times the schools, yes, even the Universities (although the Universities of Oxford, England, kept themselves to a certain extent free from sectarian influences), but up to very modern times, the great bulk of our educational institutions were denominational in character, and it is only in modern times we have understood how to bring about non-denominational school education.

Now, in these circumstances, is it any wonder that here in Canada we find denominational schools? In the Eastern Province, of course, they never know anything else but denominational schools. Is it any wonder that when in the Province of Ontario some few years ago (one hundred years nearly now) we determined to have non-denominational schools, there was some apprehension among those people who held the old ideas towards denominational schools and looked with suspicion on non-denominational schools? It is not for us now perhaps to question the wisdom of what was done in those days.

Compromise and Contract.

They have long since passed. But we must not shut our eyes to it that such denominational schools, as we have in the Province of Ontario and as we have in the Province of Quebec, are here because of compromise and contract, and it is not within our legislative power or legislative competence seriously

to interfere with them, or to change that order. It is impossible, I submit, to think accurately on this question, that touches denominational or non-denominational schools, without holding clearly in mind, first, the group or composite character of the population which we enjoy in this Province, and without remembering the historic implications that lie behind our present institutions.

The Separate School came about in the Province of Ontario because the people of Ontario, Protestant and Catholic alike, asked in those days prior to 1863 for religious training in the schools. The Member for East York made that same point this afternoon. There was a desire and a demand, particularly by the Protestants at that time, that the Bible be taught in the schools. It was because of the inability of the people at that time to agree upon some formula of religious teaching that you have the separation between one and the other. Just prior to the enactment of the law of 1881, to which the Leader of the Opposition referred, there were no less than 42 petitions presented to the Legislature of that day by the Protestants and Catholics alike, asking for the teaching of the Bible in the schools, and on the part of the Catholics, asking that no enactment be put on the Statute Books prejudicial to the interests of Her Majesty's Catholic subjects. The situation was embarrassing, and it was in order to avoid deadlock that the Government of the day appointed a special Parliamentary Committee to study this question.

The Parliamentary Committee brought in a resolution and a report, and their report was somewhat hurriedly incorporated into a Bill, which was then before the House, and it became law. The Act of 1841 made this provision: The Separate Schools were to "receive from the District Treasurer their due proportion, according to their number, of the moneys appropriated by law and raised by assessment for the support of common schools."

The Ancient Law Was Fair.

So you see, the very earliest enactment, that of 1841, gives the Separate Schools their due proportion, according to their numbers, of all moneys raised for the support of common schools. This was considered by some a rather too generous

allotment in the years that followed. It was felt that the law, perhaps, had not been given due consideration, as it had been hurriedly passed, and so in the year 1843, that Act was repealed and in its place there was enacted this interesting provision:

> "When the teacher of any school shall happen to be a Roman Catholic, the Protestant inhabitants shall be entitled to have a school with a teacher of their own religious persuasion, and when the teacher of any school shall happen to be a Protestant, the Roman Catholic inhabitants shall be entitled to have a school with a teacher of their own religious persuasion."

We can see the spirit of compromise and good will that prevailed in the Legislature of those days, so utterly different from that which has prevailed so far in the debates of this day.

And then the next Section says:

> "Such school shall be entitled to receive its share of the public appropriation, according to the number of children of the religious persuasion who shall attend such Separate School."

That is to say, in this Section of the Act of 1843, you have on the Statute Books of the Province of Ontario the principle of the division of school moneys on the basis of school population, and that principle was carried on in the Act of 1863, and again in the Bill of 1936.

Dr. Ryerson Was Just.

Now the provisions with respect to the establishment of schools, with a teacher of the religious persuasion, as they called it, of the people in the school district, was prepared by Dr. Ryerson, the great father of Public Schools. It was enacted again in a law prepared by him in 1850, for the establishment of Separate Schools "for Protestants, Roman Catholics or coloured people," but Dr. Ryerson's Act goes on to say:

> "Each such Separate School shall be entitled to share in the school's fund only for the payment of the teacher, according to average attendance, as compared with attendance at the common school."

Separate School supporters were expected to provide a school house, furnishings, equipment, books and fuel, and were

not exempt from any of the local assessments or rates for common school purposes. That enactment was considered hard and unjust and unfair by the Separate School supporters of that day, and so in 1853 there was a supplementary School Act passed providing that Separate School supporters shall be

> "exempt from the payment of all rates imposed for the support of the common or public schools," and that "each such Separate School shall share in the legislative common grant only (and not in any school money raised by local municipal assessment) according to the average school attendance."

These provisions were re-enacted in 1855 in what is known as the Tasche Bill. An interesting feature of that Bill is this, that it was sponsored on the floor of the Legislature by the Rt. Hon. John Alexander Macdonald, the great Leader of the Conservative Party, whom gentlemen on the opposite side like to revere.

This afternoon, the Honourable Member for South York quoted from the Memoirs of the late Sir John A. Macdonald, as written by Joseph Pope. He read only a portion of the excerpt. I propose to read it all. He didn't read the whole statement. This is what Sir John A. Macdonald said on that occasion. He said

> "he was as desirous as anyone of seeing all children going to common schools, and if he could have his own way, there would be no Separate Schools."

The honourable gentleman stopped there, and this is what followed:

> "But we should respect," said Sir John, "the opinions of others who differ from us, and they had the right to refuse to accept such schools, as they could not conscientiously approve of. It was better to allow children to be taught at school such religious principles as their parents wished, so long as they learned, at the same time, to read newspapers and books and to become intelligent and useful citizens."

Narrow Leadership Decried.

Everybody will agree with that, but it is not what is before us to-day. The great Sir John A. Macdonald joined hands in

1867 with George Brown on the Public and Separate School issue. Would that we had such leaders as these to join hands in the interest of harmony and national life, with a view to seeing the Separate Schools properly and adequately financed at this time. Would that we had a leader on that side of the House with the breadth of a Macdonald or a Brown who would disregard political advantage and join with the Leader of the Liberal Party and Prime Minister in putting on the Statute Books a measure of simple justice to the Catholic group, a measure required by the circumstances of the time for the preservation of harmony and the well-being of our state. (Applause.)

My friend read at some considerable length from a statement by Mr. MacKenzie (an outstanding opponent of Separate Schools in those days) in which he expresses himself as opposed to Separate Schools. My friend did not go on to show that Mr. MacKenzie sank these differences in order to bring about harmony in his country and that he voted for the Bill of 1863.

He read an extract from Dr. Ryerson. I will read from Dr. Ryerson, but I will read at a later date. That will be different. Dr. Ryerson was opposed to Separate Schools, but he joined with his fellow patriots in the compromise of that time, and he agreed to the passing of the measure of 1863. I have it here. It is musty with age. It has stood a great deal of time. It has been the subject of much discussion in the years that have intervened, but to-day it is the basic law, the common law of the Province of Ontario. Now this law is important in many ways. It is important for what it itself contains, and it is important besides in that it formed the basic law of the Province of Ontario with regard to Separate Schools at the time of Confederation, and so when Confederation fastened upon the Provinces of Ontario and Quebec, the law with regard to denominational schools as it existed in the Province of Ontario at the time, it was this Act to which the legislators referred. The Act of 1863 wes entitled "An Act to restore to Roman Catholics in Upper Canada certain Rights in respect to Separate Schools."

The preamble is as follows:

> "Whereas it is just and proper to restore to Roman Catholics in Upper Canada certain rights

which they formerly enjoyed in respect to Separate Schools, and to bring the provisions of the law respecting Separate Schools more in harmony with provisions of the law respecting Common Schools." And there is the usual enactment clause

Equality Was Intended.

There are some sections of this Bill which are of vital interest to anybody who would understand the School situation.

Take Article Seven to start with:

> "VII. The Trustees of Separate Schools forming a body corporate under this Act, shall have the same power to impose, levy and collect school rates or subscriptions upon and from persons sending children to, or subscribing towards the support of such schools, and shall have all the powers in respect of Separate Schools that the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools."

Now observe this. In the basic school law of this Province it was provided that the Trustees of Separate Schools in this Province shall have the same power to impose, levy and collect school rates that was had and possessed by the Trustees of Common Schools before Confederation. Is it not clear that the enactors of that law, which was later incorporated in the British North America Act, and became our constitutional law, and is the law now, intended that the trustees of one school should not be handicapped in the matter of the collection of their rates as compared with the trustees of other schools.

And again, and this I say is equally important. Section 14 says that every person paying rates who gives notice to the Clerk that he is a Roman Catholic and a supporter of a Separate School,

> "Shall be exempt from the payment of all rates for the support of Common Schools."

Now is not that perfectly clear in its simplicity and brevity? Isn't it perfectly clear that the men of those days did not intend that the property of Separate School supporters should be

taxed as it is to-day for the support of common schools. You cannot read the section and believe that what has grown up in our midst to-day was intended by the framers of that Act. And school libraries also are exempt, or land used for the purpose of erecting buildings for school purposes.

Division Without Preference.

My friend from Bracondale complained bitterly because in this bill of 1936, notice to the Clerk of the Municipality does not need to be renewed annually. But you have it in the basic law of 1863, and it is continued from that time to the present. That Act established the duty of the Trustee of every Separate School to transmit to the clerk of the Municipality or Municipalities, as the case may be, on or before the 1st day of June of each year a correct list of the names of residents and persons supporting Separate Schools, and they shall be exempt, etc., and isn't it fair that they should be?

Now I pass on to Article Twenty:

> "XX. Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments, and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same City, Town, Village or Township."

Observe this. That the law of 1936 is based upon the very same principle, almost in the same words, in dividing certain allotments, investments or grants or whatever you may like to call them, between Separate and Public Schools of this date. One cannot read this paragraph without being struck with the thought that the drafters of that Act intended that Separate and Public Schools should be placed on the same basis with regard to support from both provincial and municipal

treasuries. It is simply impossible to read that Act without coming to that conclusion.

Are Separate Common Schools.

Having provided for the upkeep of both Separate and Public Schools on what appeared to be a fair, reasonable and equitable basis, as they so understood at the time, it was also provided so that it could not be misunderstood that while the Separate Schools had the right to collect from their supporters, they could not at the same time levy upon Public School supporters. This is the clause. Article Twenty-One:

> "XXI. Nothing herein contained shall entitle any such Separate School within any City, Town, incorporated Villege or Township to any part or portion of school moneys arising or accruing from local assessments for Common School purposes within the City, Town, Village or Township, or the County or union of Counties within which the City, Town, Village or Township is situate."

You have the division with respect to revenue, but of equal interest is the fact that they also provided that these Separate Schools should be Separate common schools, not Roman Catholic Schools, not owned or controlled by any means by any denominational group, but managed and controlled by the Parliament of Ontario through the Department of Education. This was what they said. It is Section 26.

> "XXVI. The Roman Catholic Separate Schools (with their Registers) shall be subject to such inspection as may be directed from time to time by the Chief Superintendent of Education, and shall be subject also to such regulations as may be imposed from time to time by the Council of Public Instruction for Upper Canada."

Now I want to recall to you, Mr Speaker, and to the members of the House, that in this law which I have just read there are two methods for the division of school revenue. That is very important. There were two methods set up in that original law:

(a) Separate School Trustees were to have the same power to levy school rates upon their Separate School supporters as was possessed by trustees of Common Schools.

(b) Provincial and Municipal grants were to be divided on the basis of school population.

The same two principles of division which you find in the law of 1863, you will observe, are continued in the law of 1936.

Ryerson For Just Treatment.

I would like my fellow-members on the Liberal side of the House, at least, to know that the statements by Dr. Ryerson in regard to Separate Schools which were read by the honourable member for East York this afternoon were made somewhere about 1855. They were not the statements which he made when this law was finally passed in 1863, and which constituted the settlement between the warring factions. What Dr. Ryerson actually said on the completion of this law was,

"That he regarded it as a satisfactory settlement of a vexed question."

On page 174 of "The Story of My Life" by Egerton Ryerson, as edited by J. George Hodgins, you will find the statements of Dr. Ryerson with regard to the final settlement of the question. His views had been greatly modified as the years went by, and as they came actually to the settlement of the question. Speaking in the Legislature at the time of the passage of the bill, Dr. Ryerson used these words:

"I am second to none in promptness and determination to resist Romish aggression in any form or aspect; but when Roman Catholics desiring Separate Schools limit their application to what the Legislature has recognized as their legal right, I think that the tolerant principle of Protestantism itself, the peace and best interests of the country, the stability and progress of the Common School system—all demand a just and generous treatment of Roman Catholics in regard to privileges which they have long enjoyed, which it is not pretended they are abusing—although not one-fourth of them care to avail themselves of those privileges—yet privileges which they all appre-

ciate as a protection against local insult and oppression, and which protection they freely and ungrudgingly grant to the Protestants of Lower Canada."

Confirmed by B.N.A. Act.

Now I am pointing out that Dr. Ryerson accepted this Act of 1863 with its final establishment of Separate Schools on the basis of fairness of division of revenue and conceded generously and fully other rights of Roman Catholics in respect to Separate Schools in Upper Canada. This is very important now, because, as I have said, the Act of 1863 forms the basic constitutional school law of the Province of Ontario to-day. That this is so will be seen from Section 93 of the British North America Act. I will read sub-sections 1 and 2.

> "93. In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following provisions:
>
> (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at Union
>
> (2) All powers, privileges and duties at the Union by law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic subjects in Quebec."

There you have the statement of our school law as it now exists in this Province, confirmed in our Constitution, the British North America Act of 1867.

Primary Schools Only.

During the years that have since passed, our school law has been the subject of judicial interpretation on a number of occasions. In the Tiny Township case in the Province of Ontario it was decided that the rights of the Roman Catholic minority with respect to Separate Schools are confined to primary schools and do not extend to secondary or high schools.

This bill of 1936 refers to Primary Schools only, and not

to Secondary or High Schools, and any attempt at the present moment to frighten people with the idea that changes are being made in the High School System of Ontario, or in the Secondary Schools, is most misleading and contrary to the facts. The right to the division of grants and assessments between the two types of schools is limited to the Primary Schools only.

And a second thing was settled in what is known as the Ottawa School case. In this case it was made amply clear that Separate Schools are not the creatures of a Catholic minority, but are common schools, separated for denominational purposes only and subject to the same governmental control and regulation as Public Schools. In the judgment of the Court of Appeal for Ontario in the Ottawa case, Chief Justice R. M. Meredith said:

> "The right or privilege which the Act of 1863 conferred upon Roman Catholics and the persons chosen by them to carry on and manage their schools was, not to manage and conduct them according to their own will and pleasure, but only to do so in accordance with the law and regulations. They are thus separated common or state schools."

Basic Principle Stated.

Now the law with regard to the support of these schools is, in my judgment, pretty clearly stated by the Hon. Mr. Justice Meredith, Chief Justice of Ontario, in MacKell & Ottawa Separate School Trustees (1915) 34 Ontario Law Reports, at page 340. He says:

> "The basic principle upon which the Separate Schools were founded was that Roman Catholics should not be required to contribute to the support of common or Public Schools if they chose to establish Separate Schools for the education of Roman Catholic children, and that in the event of their doing so, these schools should share in the legislative grants for common or public school education, and that for their support the Trustees of the schools should have power to impose, levy and collect school rates or subscriptions from persons sending children to or subscribing towards the support of the schools, and that they

should have all the powers in respect of their schools that Trustees of Common Schools have and possess under the Acts relating to Common Schools."

So you see, you not only have the Acts, but you have judicial interpretation of the highest order that the Trustees of Separate Schools shall have the same power to levy rates for the support of Separate Schools upon the property of Separate School supporters as is enjoyed by the trustees of common schools with respect to common school supporters.

The law has remained unchanged since 1863 except when it was amended in 1886 by the Ontario Legislature. We made a more or less fundamental change in 1886 by providing that corporate taxes might be divided among the Separate and Public Schools upon some basis of division which, however, has not worked out very well. The law has remained without change other than that mentioned for seventy years or more, but while the law remained the same, circumstances and conditions have altered.

My friend was endeavouring to point out that corporations existed in Ontario in 1863, and he read with a great deal of unction a section from the Act of 1863, which said:

"Every person paying rates whether as proprietor or tenant,"

and so on. When he pointed out "every person" he unfortunately forgot to also mention that in the Interpretation Act in the Statutes of that day a "person" was then defined as it is to-day, as including a corporation.

Corporate Growth Unforseen.

There were corporations in existence, of course, at that time, but they were few in number, Mr. Speaker, and their ownership in property was unimportant. They were not included in the Act of 1863, not because they were not thought about, but because the people of that time could not imagine or visualize the business and social development which has taken place in these seventy years. What has transpired in that interval has transferred very much of the nation's wealth

from individual private ownership into corporate ownership. If they could have foreseen this development, I don't doubt for a moment that the principle of the law of 1863 would have found expression in regard to the coming development in the same words as were used with regard to the things of which they knew. Gradually, as years have gone by, with the growth of a complicated business organization, a very large proportion of our nation's wealth has passed into company control. The Member for East York, in his speech this afternoon, said that no individual has any ownership in the property of a corporation. Well, of course, that may be a legal subtlety of which his lawyers may have advised him, but the actual fact is that the corporation which owns the property is owned in turn by the people who invest their money in the corporation. The ownership is really in the people who own the shares —the shareholders, and it was provided by actual specific enactment by the Fathers of Confederation that property which belongs to a Catholic shall not be the subject of taxation for the support of common schools, as it is to-day. It was intended that the assessment of property (whether it is corporate or otherwise is a mere incident) should in actual fact be divided among the two types of schools in accordance with school population or something of that kind.

Similar Acts in West.

Now, my friend says that the school law cannot be changed, cannot be altered. Of course that is not so. Where the school law of 1863 had only 28 sections, the Separate School Act of to-day has 108 sections, and yet the basic school law of to-day is the basic law of 1863. Of course it can be changed, but it cannot be changed according to the British North America Act (and this is the only restriction), in such a way as to prejudically affect any right or privilege with respect to denominational schools which the Roman Catholics in the Province of Ontario had by law at Confederation. That is the one restriction.

Now my friend says that this proposal is ultra vires of the Legislature of our Province. Well if so, it is equally ultra vires of the Legislature of the Province of Alberta and of

Saskatchewan, and yet as far back as 1910 the Legislature of Saskatchewan faced this same problem in exactly the same way as we face it to-day and for the same reason, and they met the problem by deciding that corporate taxes should be divided between the two types of schools on the basis of school population, that is the number of pupils in either school. We have not gone so far as that. We have been more moderate. We have met the demands of the Separate School supporters in a more moderate way than they, and have made our division on the basis of the ownership of property by the people who support Separate Schools. As all people seem to know, the Protestants of our population are more wealthy than the Roman Catholics, the greater owners of wealth, and so we have taken a more moderate method of making the division on the basis of ownership, but the principle is not altered, and in this connection I would direct my friends to page 90 of Mr. Weir's book, and to the Judgment of the Supreme Court of Saskatchewan, July 15th, 1914.

Mr. Henry's Position.

If this law is ultra vires the same applies to the law in Alberta and Saskatchewan, which has stood the test of court decisions and attacks upon it since 1910. I think the fact that my friends have raised the question of unconstitutionality is of interest, not so much because of the substance of their claim, but rather because of the intimation they give that they are ready to attack this law in the courts if they feel they can possibly get something that will disturb in some way the situation we propose to create. They are determined, it seems, that we shall not settle this question; that the moderate scheme we have proposed to allay the reasonable objections of Separate School supporters, and to give to their children the support they require, shall not succeed. They are prepared to attack it in the courts and the former Prime Minister intimated on the floor of the House to-day that should they be returned to power, they would repeal this Act. Well, I am glad they have taken a definite final position that no one can question.

MR. HENRY: I never did.

MR. ROEBUCK: You intimated on the floor this afternoon that if you were returned to office you would repeal this Act.

MR. HENRY: I never made any such intimation. In fact, I refused to answer that question put by either him or the Prime Minister, and I ask to have the statement withdrawn.

MR. ROEBUCK: Now will you say?

(Mr. Henry made no audible answer).

Will you say that you will keep the Act on the Statute Book if you are returned to power?

(Mr. Henry made no audible answer).

You won't say that you won't repeal the Act, and you won't say that you will keep the Act. What's your idea? The idea is simply to oppose this legislation.

MR. HENRY: That is what we get when I say to the Attorney-General he is not stating the facts.

MR. SPEAKER: What are the words to be withdrawn?

MR. ROEBUCK: I made the statement, Mr. Speaker, that the Honourable gentleman had intimated on the floor of the House that if they were returned to power, he would repeal the Act, and in that very connection he asked the question whether or not it could be repealed and for half-an-hour he laboured the fact as to whether it could be repealed.

MR. HENRY: Mr. Speaker, am I to have those words withdrawn, that I, by inference or intimation, said if we were returned to power we would repeal the bill that they now propose should become an Act, and that we would move its repeal.

MR. ROEBUCK: I withdraw my statement on the understanding that the Hon. Gentleman now intimates that if returned to power he will retain the Act.

MR. HENRY: Mr. Speaker, are we to have anything to do with this? The Hon. Gentleman is required under the rules of the House to unequivocably withdraw the statement I object to.

MR. ROEBUCK: Will the Hon. Gentleman kindly tell me which he will do, abolish the Act or retain the Act?

MR. SPEAKER: The Hon. Member for East York makes the definite statement that he did not make certain statements this afternoon. I will take his word for it.

MR. ROEBUCK: Mr. Speaker, I never said he did . . . . . (The conclusion of Mr. Roebuck's sentence was inaudible in an uproar).

May I point out to those noisy boys across the floor that their uproar will not win this argument. What I said, Mr. Speaker, was that he had intimated something of that sort.

SOME MEMBERS: Withdraw! Withdraw!

MR. HENRY: I made no such intimation, and I ask for an unequivocal withdrawal.

MR. ROEBUCK: Is the Gentleman standing on his head or standing on his feet, Mr. Speaker? Is he hot or cold? White or black? Is he with us, or is he against us?

MR. SPEAKER: As I said before, the Hon. Member for East York said he did not make certain statements this afternoon. We must take his word.

MR. HENRY: I have already said that. My Hon. friend says he doesn't know whether I am white or black. I am neither. I am red-blooded. (Applause).

MR. ROEBUCK: May I suggest, Mr. Speaker, that the red blood should be a mild pink. (Cheers).

MR. ELGIE: I want to know, Mr. Speaker, as to whether in your opinion, as Speaker of this House, whether or not the words of the Attorney General constitute in your mind a gentlemanly withdrawal of a remark which he made with regard to the Member for East York?

MR. ROEBUCK: I didn't say that the Hon. gentleman opposite said he would repeal the bill. I said that he intimated. Now, then, I have nothing to withdraw, because he did so intimate.

MR. HENRY: I didn't intimate. I ask for that withdrawal.

MR. ROEBUCK: I withdraw it to this extent, that he now says he dosn't wish to be understood as having made it.

MR. HENRY: No. No. An unequivocal withdrawal, and I ask for it in no pussy-footing manner from the Attorney-General. I am asking the Speaker for his ruling. I didn't intimate if I got into power I would repeal the Act now under discussion.

MR. SPEAKER: Will the Hon. Member take that?

MR. ROEBUCK: Yes, but if he is so red-blooded he ought to tell us whether he will retain the Act if he is not going to repeal the Act.

HON. MEMBERS: Come across.

The People Will Judge.

MR. ROEBUCK: The trouble with the Hon. Gentleman is that he succeeded in fooling both the Separate and Public School supporters prior to the election, and he wants to play the same game in the coming election. He's got to get on or off the band wagon. He can't drive a middle course by merely opposing what we are doing without saying what he is going to do.

I submit to this House that the one thing the people of this Province demand of a government is a clear statement of where they do stand. Our Leader has not been found "pussyfooting" upon the problem. He has grasped it and has placed before this House a definite measure to cure the situation in this Province. I invite the people of this Province to take their choice between our own courageous Prime Minister and the Leader of an Opposition striving to face both ways. The man across the way won't say whether he will repeal the Bill if he has the power, or whether he will support it and keep it in existence. He is afraid to express himself. The people will be the judges between the forthright method of this Government and the pussy-footing and concealment across the way.

STATEMENT

BY

THE HONOURABLE R. ROY MCMURTRY
ATTORNEY GENERAL FOR ONTARIO

RE: RELEASE OF REPORT OF
LIAISON COMMITTEE ON
ENFORCEMENT OF FAMILY
LAW ORDERS

MARCH 28, 1983

In May, 1980, as a result of my concerns and the concerns expressed by the public and by Members of the Legislature, particularly the former Member for St. George, Margaret Campbell, I established a liaison committee to consider problems in the enforcement of family law orders.

Rather than duplicating the efforts of other governments and agencies involved in reviewing social policy and family violence, I felt that a unique contribution could be made by establishing a committee for liaison with my Ministry, the Family Law Bar, transition houses and the police.

I appointed as chairman Dr. H. Allan Leal, then Deputy Attorney General, who served as Chairman until he was appointed Special Constitutional Advisor to the Premier. John Takach, then Director of Crown Attorneys and now Assistant Deputy Attorney General for Criminal Law subsequently assumed chairmanship of the Committee. Craig Perkins of the Policy Development Division was the other full member of the Committee from the Ministry. The Family Law Bar was represented by Philip Epstein, Q.C., and Geraldine Waldman, both of Toronto and Maureen Hastings of Sudbury. Ms. Trudy Don represented the Ontario Association of Transition and Interval Houses and Deputy Chief James Noble came to the Committee from the Metropolitan Toronto Police Force.

It was my hope that through sharing of information, problems and concerns, the Committee would develop a better understanding and appreciation of the practical complexities involved in the enforcement of family law orders and could recommend improvements in the day-to-day administration of justice.

In addition to producing a thoughtful and thorough report, the Committee provided a forum for discussion and resolution of immediate problems raised by the members. I congratulate the Committee on its excellent work.

In large part the value of the Committee's work has already been recognized. The submissions of my Ministry representatives to the Liaison Committee were made available to and are reflected in the recommendations of the Legislature's Standing Committee on Social Development in its study of family violence. Other members of my Liaison Committee appeared before the Social Development Committee and contributed to their recommendations as well.

The Liaison Committee has made more than 50 recommendations directed to my Ministry, other provincial ministries, the federal government, the police, and the legal profession.

Recommendations affecting the Ministry of the Attorney General include:

- amendments to strengthen the powers for enforcing non-harassment orders and orders for exclusive possession of the matrimonial home

- clarification of the duties of Sheriffs in enforcing family law orders

- increased involvement of Crown Attorneys at all stages of criminal proceedings, including assistance to victims and witnesses.

The Committee recommends that the provincial government increase funding for shelters for victims of domestic violence.

To the federal government, the Committee recommends that there should be access to records of federal agencies to obtain the addresses necessary to enforce family orders and that amendments to the bail provisions of the Criminal Code should be considered.

RECOMMENDATIONS DIRECTED TO THE POLICE INCLUDE:

- A GREATER ROLE IN LAYING CHARGES

- IMPROVED POLICE TRAINING REGARDING THE CRIMINAL NATURE OF DOMESTIC VIOLENCE

- BETTER INFORMATION FOR POLICE ABOUT THE AVAILABILITY OF POWERS UNDER THE CRIMINAL CODE FOR PROTECTING VICTIMS.

THE COMMITTEE MAKES A NUMBER OF RECOMMENDATIONS TO INCREASE THE AWARENESS OF THE LEGAL PROFESSION OF THE RANGE OF EXISTING REMEDIES IN BOTH THE CRIMINAL AND CIVIL LAW THAT CAN BE USED MORE EFFECTIVELY TO ENFORCE FAMILY LAW ORDERS AND PROTECT VICTIMS OF DOMESTIC VIOLENCE.

IN RESPECT OF THE COURTS, RECOMMENDATIONS INCLUDE:

- CLARIFICATION OF POLICIES CONCERNING USE OF THE CRIMINAL COURTS AND FAMILY COURTS IN DOMESTIC VIOLENCE CASES

- HEAVIER SENTENCES FOR DOMESTIC VIOLENCE

- MORE EFFECTIVE USE OF PROBATION AND CONDITIONAL DISCHARGES.

It is clear from the scope of recommendations that everyone involved in the administration of justice has a significant responsibility in dealing with domestic violence.

The recommendations of the Committee merit serious attention. Those recommendations affecting my Ministry will be given immediate, full and careful consideration. I will bring to the attention of the appropriate authorities and organizations the recommendations that affect their area of responsibility.

I am particularly pleased that the Committee, which had only two of seven members from my Ministry, gave strong support to the Ministry submission on the role of the criminal justice system in domestic violence cases.

To a considerable degree the recommendations relating to increased Crown Attorney involvement and a more active role by the police in laying charges have already been acted on. Last summer I advised all Crown Attorneys that it has been a long-standing policy of the Ministry to pursue vigorous prosecution of incidents of domestic violence. I reaffirmed that policy and requested that Crown Attorneys review the policies of the police in their jurisdiction and make every effort to encourage police to lay appropriate charges.

Further directions will now be prepared to the Crown Attorneys outlining additional policies that should be implemented following the review of the Liaison Committee recommendations.

A number of recommendations relate to matters arising under the Family Law Reform Act, such as enforcement of orders for exclusive possession of the matrimonial home. In December, I announced a review of that legislation and the Committee's recommendations will be considered as part of that review.

In conclusion, it is clear that this Report makes an important and helpful contribution to our efforts to reduce domestic violence in Ontario. It was not intended to deal conclusively with the problem but to provide a reference point for future action. It has done that most admirably and I again thank and congratulate the members of the Committee for their excellent work.

STATEMENT TO THE LEGISLATURE

BY

THE HONOURABLE IAN SCOTT

ATTORNEY GENERAL

"THE FUND FOR DISPUTE RESOLUTION"

MARCH 27, 1990 CHECK AGAINST DELIVERY

Mr. Speaker:

I am pleased today to announce the creation of a $1.125 million Fund for Dispute Resolution. Over the next four years, the Fund will provide incentives to lawyers, social scientists, and community justice advocates to carry out research and evaluation in the field of alternative dispute resolution, or ADR as it is popularly known.

ADR techniques such as mediation and arbitration offer a complementary alternative to litigation, the traditional method of resolving disputes between parties in our justice system.

The Fund represents the collaborative efforts of three major donors: The Ministry of the Attorney General in the amount of $500,000, the Donner Canadian Foundation, $320,000 in support of the Fund's infrastructure costs, and the Law Foundation of Ontario, $300,000.

The Fund will be administered on behalf of the contributors by the Network: Interaction for Conflict Resolution of Kitchener, Ontario, a national, charitable organization active in the ADR field.

The establishment of the Fund represents an extraordinary opportunity for cooperation between government and the private sector, and for blending the experience of judges and lawyers with that of mediators, arbitrators, academics and community justice advocates.

In addition to the participation of my ministry, the Donner Canadian Foundation and the Law Foundation of Ontario, other groups have expressed an interest in contributing to the the Fund. We welcome their participation.

Alternative dispute resolution techniques can be used in a variety of circumstances. Arbitration and conciliation have long been used effectively in resolving labour disputes. Family mediation has an increasing number of advocates. The use of ADR is widespread in the United States on the assumption that it reduces the financial burden on the justice system, reduces the time and costs for litigants, and provides a more satisfactory experience for the parties than the adversarial process of litigation.

Interest in Canada in applying ADR to a broader range of problems is burgeoning. In fact, this Legislature's Standing Committee on the Administration of Justice is conducting hearings at this time to examine the different faces of ADR and its value in resolving, and even reducing, conflict in society.

The lesson we have learned from a decade of American experience is that rigorous evaluation must accompany all ADR experiments. The Fund will target legal and social research aimed at evaluating the capacity of ADR to reduce costs and delay and whether it provides a more satisfactory means of resolving disputes between parties without diminishing legal or constitutional rights. Educational projects which encourage the use of effective ADR techniques will be funded. At the end of four years all of the participants in the justice system will have the benefit of this research to guide them in the development of future policy and programs for ADR.

Advocates argue that ADR has great promise. To determine its future role in the justice system, ADR must be tested in Ontario. The Fund for Dispute Resolution will encourage this evaluation.

Thank you Mr. Speaker.

BACKGROUNDER

ON ALTERNATIVE DISPUTE RESOLUTION

- Alternative dispute resolution (ADR) encompasses many techniques for resolving disputes either as an adjunct to or an alternative to the traditional trial of a case in court. In some cases, it is very closely tied to the litigation process and can include procedures such as pre-trial conferences and pre-trial disclosure of evidence. There is already some provision for these procedures in Ontario's rules of court. Voluntary mediation conducted by panels of expert litigation lawyers is common in the U.S. as a means of measuring the likelihood of success of civil claims and making recommendations for settlement. This is a mandatory part of the civil litigation process in Detroit's courts, for example. Another example of court-linked ADR includes programs which divert certain types of minor criminal cases such as shoplifting out of the courts.

  In its most independent form, ADR may take the form of arbitration in which the parties opt out of the court process, choose their own decision maker, and set their own rules for determining disputes. The Private Court in Toronto is a model based on arbitration. Neighbourhood Dispute Resolution in which community volunteers are trained to mediate disputes between neighbours can cover matters ranging from fence-line disagreements to race relations problems. St. Stephens House in downtown Toronto is an example of this form of ADR which, again, is outside the formal court system. Because ADR is a generic term and covers a wide range of techniques it is important to be able to assess the value of any particular form of ADR, be it negotiation, conciliation, mediation or arbitration, in addressing a particular problem in the justice system.

<u>ADR in the United States</u>

- ADR began taking shape in the US about fifteen years ago because of serious concerns by litigants, lawyers and judges about the costs and delays involved in going to court. The use of jury trials and the backlogged court dockets in the U.S. meant that cases could take over five years to get to trial, and lawyers' fees would be out of reach for all but the wealthiest.

- Many thousands of ADR related projects were developed in the United States ranging from court-annexed methods to community mediation, in every field from family law to securities regulation. From the Chief Justice of the United States Supreme Court down, ADR initiatives were seen as a way out of the problems plaguing American courts.

- Only recently have people in the U.S. begun to question whether ADR is the panacea it was touted to be. Although there have been some successes, belated evaluation has revealed that some programs have actually increased costs and delays. There are also concerns that mediation has undercut efforts to legally empower the poor and women, particularly in family law, by making access to the courts more difficult. Critics also argue that disadvantaged groups are in an inherently weak bargaining position and will inevitably lose in mediation. This imbalance, they argue, can only be righted by an adversarial process before an independent judiciary.

ADR in Canada

- The use of conciliation, mediation and arbitration in specialized tribunals such as the Workers Compensation Board (established in 1914) and the Ontario Labour Relations Board (1944) is long established.

- The pressures to adopt ADR to address delay and cost problems in other fields is growing. Forms of mediation were developed by the recently established Freedom of Information and Privacy Commission of Ontario, for example. A form of voluntary arbitration is being proposed as part of Ontario's new auto insurance legislation.

- Burgeoning Canadian interest resulted in the formation of an ADR Task Force by the Canadian Bar Association. This task force completed a major study of ADR and in August, 1989 published "Alternative Dispute Resolution: A Canadian Perspective". The recommendations urged further research and study into suitable and effective ADR processes for Canadian society and that appropriate institutions be urged to give the necessary support to ensure quality research and study.

Other recent ADR developments include:

- A full day of last summer's Canadian Bar Association annual meeting was devoted to the discussion of the CBA task force report "Alternative Dispute Resolution: A Canadian Perspective".

- In the private sector, there has also been a growing interest in ADR. At least two private companies in Toronto and others in major centres across Canada now provide dispute resolution services to corporations and individuals.

- The Donner Foundation has donated $250,000 over a three year period to the Canadian Institute for Dispute Resolution of Ottawa to promote and evaluate various ADR activities in both schools and the corporate/commercial world.

- The Ontario section of the Canadian Bar Association has formed an alternative dispute resolution committee.

The Network:
Interaction for Conflict Resolution

- The Network was selected to host the Fund For Dispute Resolution because it encompasses one of the broadest ranges of conflict resolution activities of any organization in Canada.

- The Network is an association of organizations and individuals formed in 1985 to promote better conflict resolution in criminal, civil and community disputes throughout Canada. As a national body promoting such initiatives, The Network prepares directories and other resource materials, convenes conferences, conducts training seminars, and generally facilitates the exchange of information among the many constituencies active in dispute resolution in Canada.

- The Network is a facilitator among the different organizations devoted to conflict resolution that are emerging in Canada. Through the National Consultation on Conflict Resolution, the Network creates forums where structured discussions among representatives of national, provincial and university-based organizations active in the field of dispute resolution can occur.

- The Network is governed by a national board of directors drawn from various walks of life and maintains its national office and resource centre in Kitchener, Ontario. Judge Paul Niedermayer of Dartmouth, Nova Scotia is chairman of the Board while Dean Peachey serves as the staff coordinator. The Network is a charitable organization.

- The Network has also served as a link between U.S. and Canadian ADR developments. The organization has had a close working relationship with the American Bar Association Committee on Dispute Resolution and the National Association for Community Justice.

STATEMENT TO THE LEGISLATURE

BY

THE HONOURABLE IAN SCOTT

ATTORNEY GENERAL

ON

REPORTS BY MANITOBA AND NEW BRUNSWICK ON

THE MEECH LAKE ACCORD

THURSDAY, NOVEMBER 2, 1989

CHECK AGAINST DELIVERY

NOVEMBER 2, 1989

STATEMENT BY THE ATTORNEY GENERAL

ON REPORTS BY MANITOBA AND NEW BRUNSWICK ON

THE MEECH LAKE ACCORD

Mr. Speaker, last week a legislative committee in New Brunswick and a task force in Manitoba issued reports and proposed recommendations respecting ratification of the 1987 Constitutional Accord, or as it is more commonly called the Meech Lake Accord. At about the same time the Premier of Newfoundland circulated a letter addressed to the Prime Minister containing his observations on a number of substantive issues with regard to the Accord. It is my understanding that these observations will in due course lead to a set of proposals from Newfoundland for modifications to Meech Lake.

With the publication of the New Brunswick and Manitoba reports, the two provinces that have not yet passed the Meech Lake Resolution have now set out their reactions to the Accord. With the end of this phase, it is appropriate for Ontario to respond to these reports. I am pleased to table today an assessment prepared by my Ministry of the Manitoba and New Brunswick reports. On the basis of this assessment, I propose to comment briefly on the reports and on their implications for the future of constitutional evolution in Canada, bearing in mind that

these are reports made to the Premiers of their respective provinces and may not reflect the final position adopted by those governments.

The views expressed by Premier Wells also deserve careful consideration and a detailed response, but it would be unjust to address Newfoundland's position prior to the release by its Premier of its formal proposals.

The Meech Lake Accord is itself a phase in the ongoing process of constitutional renewal in Canada. Its immediate source is the patriation of the Canadian Constitution in 1982. That event was achieved without the concurrence of Quebec and over its objections. As a result, despite the promise in Ottawa and in numerous provincial capitals of a renewed federalism which featured prominently in the Quebec referendum of 1980, patriation and the entrenchment of a Charter of Rights and Freedoms were both accomplished without the formal agreement of a province representing more than a quarter of the population of our country. Faced with this reality, it was widely recognized that any further constitutional progress depended on a constitutional reconciliation with Quebec and on its return to full and willing participation in the Canadian constitutional family.

In spring 1986, the Government of Quebec circulated five proposals for securing Quebec's willing assent to the Constitution. These five points were:

1. Recognition of Quebec as a distinct society.
2. A greater provincial role in immigration.
3. A provincial role in appointments to the Supreme Court of Canada.
4. Limitations on the federal spending power.
5. A veto for Quebec on constitutional amendments.

These five proposals were greeted positively throughout Canada as a reasonable basis for renewing Canadian federalism. In August 1986 the Premiers of all the provinces meeting in Edmonton agreed to limit the next round of constitutional negotiations to Quebec's proposals and to defer other constitutional issues to subsequent rounds. This so-called "Quebec round" of constitutional negotiations culminated, almost a year later, in meetings first at Meech Lake and then at the Langevin Block. The result, unanimously agreed to by the First Ministers of Canada and its ten provinces, was the Meech Lake Accord.

I have dwelt at some length on the events leading up to the Meech Lake Accord because it is only by keeping this background in mind that one can understand and assess the agreement that was reached. The Meech Lake Accord was the result of a recognition that securing Quebec's active and willing participation in the constitutional process was a necessary prerequisite for any further constitutional development. It was based on a general agreement as to the basic reasonableness and acceptability of Quebec's five proposals for achieving that participation and it was made possible by a decision to limit the subject matter of that round of negotiations insofar as possible to these proposals and matters arising from them.

It follows, Mr. Speaker, that assessment of the unanimous Accord produced by the Quebec round must take place in the context of the history and of the process that produced it. The first point to note in this regard is that agreement <u>was</u> reached and a series of constitutional adjustments responsive to Quebec's five proposals were arrived at. The Meech Lake Accord does not settle once and for all the outstanding constitutional issues facing Canada, nor does it correspond in all its details to the position most favourable to any given province. The Accord is clearly a compromise. None of

the participants, including Quebec, was successful in achieving all of its goals.

The first question, then, that a legislature considering the Accord must ask itself is whether it agrees with the overall goal of securing national constitutional reconciliation based on Quebec's five proposals. If the answer is yes, then, recognizing that the Accord constitutes a compromise among many different parties with many different interests, the next question is whether any aspects of this particular compromise are so fundamentally flawed as to make it imposible to ratify the Accord without immediate change. There is no impropriety in pointing out imperfections and in suggesting improvements to the Accord, but if such suggestions do not attract unanimous approval, then, given the importance of the fundamental goal of constitutional reconciliation, no party should, without great care and thought for our future as a nation, make them preconditions for its agreement to the Accord as a whole.

It is in this evaluative context that the Select Committee of this Legislature that studied the Accord described it as "an enormously important piece of unfinished business in Canada's constitutional history." Although it concluded that there were improvements that

could be made in subsequent rounds, it recommended that the Accord be ratified by the Legislature in its existing form, as indeed it was.

In the same context Mr. Speaker I can inform you that in my judgement neither the New Brunswick nor the Manitoba report identifies any fundamental flaws that would justify reopening the Accord but that several of the preconditions for ratification proposed by Manitoba strike directly at the heart of the Accord and would amount to a rejection of the very principles upon which it is based.

Turning to the Report of the New Brunswick legislature, it is important to note that all of its observations and recommendations are made in the context of an acceptance of Quebec's five proposals and a recognition of the crucial importance of securing the overall goal of national constitutional reconciliation that underlies the Accord.

The New Brunswick report does contain a number of observations on what that committee considers to be shortcomings or oversights in the Accord. Some of these observations correspond to observations made by our own Select Committee. Others find no parallel in the Ontario Select Committee Report and indeed some of the proposed

modifications would likely be unacceptable in Ontario. These recommendations are, however, put forward as a basis for discussion for proposed improvement and not necessarily as preconditions for securing New Brunswick's assent to the Accord as a whole. On this basis, the concerns identified by New Brunswick can and should form the subject matter of ongoing discussions that, like the concerns and proposals raised by Ontario and others, will form part of the continuing process of constitutional evolution.

The report of the Manitoba Task Force proceeds differently. Although stating support for the Accord's overall goal of constitutional reconciliation, the Manitoba Report recommends that approval of the Accord be withheld unless six specific changes are made. As I have stated, it is my view that none of these six recommended changes address fundamental flaws that would justify reopening the Accord, but that several would go directly to its heart and would, in effect, reject three of the five proposals upon which the Accord is premised.

The first of Quebec's five proposals is recognition of its distinct society. The Accord addresses this proposal through its "linguistic duality/distinct society" clause.

The clear purpose of that clause is to respond to Quebec's proposal that it be recognized as a distinct society, while safeguarding the rights of linguistic minorities both in Quebec and in the rest of Canada and without changing the division of powers under the Constitution.

It is important to emphasize that this clause does not confer any new powers on the Province of Quebec. This was the conclusion reached by the Ontario Select Committee and I am pleased to note that this conclusion is not contradicted by either the Manitoba Task Force or the New Brunswick Select Committee.

Although the Manitoba Task Force states its support for recognizing Quebec's distinct society, it recommends that the "linguistic duality/distinct society" clause not be ratified unless three specific changes are made. As I have suggested, in assessing these proposed changes it is necessary to consider whether they respond to fundamental flaws in the Accord and, beyond that, whether they would be consistent with the principle underlying the Accord, of effective constitutional recognition of Quebec's distinct society.

The first proposal recommends withholding assent to the Accord unless the list of fundamental characteristics referred to in this clause is expanded beyond the recognition of Canada's linguistic duality and Quebec's distinct society. No doubt, as the Ontario Select Committee noted, it would be symbolically appropriate and indeed preferable, that the list of fundamental characteristics of Canada be fuller and more comprehensive. The purpose, however, of this particular clause is not to list all the fundamental characteristics of Canada but merely to identify and give constitutional recognition to two characteristics that have not previously been entrenched as interpretive principles. Other possible fundamental characteristics, including multiculturalism and aboriginal rights are already recognized in other clauses of the Constitution. Bearing in mind the purpose of the clause, the omission of a fuller list is surely not a fundamental flaw.

A second objection raised to the "linguistic duality/distinct society" provisions relates to the "non-derogation" clause. This provision specifies that nothing in the "linguistic duality/distinct society clause" is meant to derogate from multiculturalism as an interpretive principle nor from existing aboriginal rights and treaties recognized in the Constitution. The worst

that can be said about this provision is, as numerous constitutional scholars have noted, that it is redundant since there is nothing in the Accord capable of derogating from the constitutional protections of multiculturalism and aboriginal rights. The Manitoba Task Force, however, recommends that the Accord not be ratified unless the non-derogation provision is expanded to include the Canadian Charter of Rights and Freedoms. Mr. Speaker, Canadian courts are already using the concept of the distinctness of Quebec's society as an interpretive tool with regard to the Canadian Charter of Rights and Freedoms, especially when they come to consider--as the Constitution requires them to do--whether a particular provision is demonstrably justifiable in a free and democratic society. The Manitoba Task Force's proposal would prevent courts from looking at Quebec's distinct society in such circumstances. In other words, not only is the Manitoba proposal not addressed to a fundamental flaw in the Accord, its result would be to overturn the status quo and leave Quebec with less legal recognition of its distinct society than it now enjoys!

A similar observation may be made with regard to the recommendation to withhold ratification unless the Quebec's role is described as "upholding" rather than as at present, "preserving and promoting" its distinct

identity. Given that the existing clause does not confer any new powers on Quebec, this change either has no impact and is therefore not addressed to a fundamental flaw requiring immediate correction, or it represents an attempt to take away something already enjoyed by Quebec. In that case it, too, would be inconsistent with the basic principles underlying the Accord.

A second cardinal principle among Quebec's proposals was a limitation on the spending power as applied to shared cost programs. In such programs, whose constitutionality has never been tested, the federal government initiates programs in areas that the Constitution assigns exclusively to the provinces and provides a portion of the funding. The benefits to the provinces of federal funding are obvious, but in order to enjoy these benefits, a province must either accept priorities and provisions different from those it might choose for itself, or risk losing federal assistance. If the province decides not to participate, its citizens will see a portion of the federal income tax they pay spent elsewhere by Ottawa on a social program from which they derive no benefit at all. The solution proposed by the Accord is, for the first time, to confirm the right of the federal government to set national objectives in areas of exclusive provincial jurisdiction, but to balance such

right with the right of a province, not only to "opt out" of the program, but also, so long as it institutes a program of its own that is compatible with the national objectives, to be entitled to compensation from the federal government. Far from being an example of a massive and unwarranted transfer of power to the provinces as has some times been claimed, this provision in fact simply proposes modest limits on an extension of federal power into the realm of provincial jurisdiction.

The Manitoba Task Force recommends withholding ratification of the accord unless this clause is deleted from the Accord because it finds the clause "controversial". This rejection of a provision whose fundamental flaw is never clearly identified amounts to a rejection of any qualification on the federal spending power and would likewise constitute a rejection of a second of Quebec's five proposals.

Prior to the patriation of the Constitution in 1982, it was generally thought that Quebec had by convention acquired a right not to have constitutional change imposed on it without its consent. This assumption proved to be incorrect, and under the terms of the Constitution Act, 1982 constitutional amendments in a number of areas are capable of being made on the basis of

the consent of the federal government and two-thirds of the provinces representing fifty percent of the population of Canada. The Accord responds positively but within limits to the essence of Quebec's proposal to limit such unconsented constitutional change.

The Accord recognizes the principle that constitutional change to significant national institutions ought not to be imposed on a province against its will. It also recognizes the principle that all provinces and not just Quebec ought to benefit from this right. It therefore selects a small class of national institutions and requires that amendments to these be subject to unanimous consent. For other constitutional amendments, two thirds and fifty per cent remains the "general" formula.

The Manitoba Task Force concludes that a requirement of unanimity will make more difficult the prospect of Senate reform and therefore recommends refusing ratification unless reform of the Senate be made subject to the "general" amending requirement rather than unanimity.

Other provinces no less committed to Senate reform than Manitoba, have concluded that the principle of

the equality of all provinces which is a key component of their vision of Senate reform, requires that all provinces must have an equal right not to have national institutions changed against their will. Many observers have noted that on a practical level, no reform of so vital an institution as the Senate can occur without Quebec's participation, but in any event the Manitoba Task Force's position would amount to a rejection of yet another of Quebec's five proposals.

The remaining three recommendations for changes to the Accord put forth by the Manitoba task force, while not amounting to repudiations of Quebec's five proposals, nevertheless propose withholding approval of the entire Accord unless relatively minor amendments are made to particular provisions. However worthy of consideration and possible future action such suggestions may be, none can reasonably be characterized as aimed at so fatal a flaw as to justify allowing the Accord to fail if it is not adopted as an amendment.

Mr. Speaker in 1987 a hand of friendship and reconciliation was extended to Quebec in the form of the Meech Lake Accord. The Accord itself is a balanced set of modest constitutional adjustments that fairly reflects the evolving relationship amongst all the parties to

Confederation. As the Ontario Select Committee reported there is room in the Accord for improvement and further constitutional development. But without the Accord it is doubtful whether any constitutional growth is possible. That is the spirit in which the Ontario Select Committee made its recommendations for future improvements to the Accord and to the constitution. It is to be hoped, Mr. Speaker, that those who have now made us aware of the concerns voiced in various quarters will at this point join in a process of addressing these concerns within the framework of reconciliation embodied in the Accord. It is time, Mr. Speaker to take careful note of the importance and sensitivity of the point in our nation's history at which we now find ourselves. It is a moment that requires those who find fault with the compromises in the Accord to take careful stock of the seriousness and significance of their concerns and to weigh them realistically against the consequences of turning a moment of national reconciliation into a moment of national estrangement.

It is profoundly to be hoped that in the weeks and months ahead, such reflection will lead to a determination to seize an opportunity that may not soon present itself again and to ensure agreement to the necessary first step in the continuing evolution and improvement of our constitution and of our nation.